

Chapter 5.70

SEX ORIENTED BUSINESSES

(2523-12/81, Urg. Ord. 3341-10/96, 3431-7/99, 3470-11/00, 3751-11/06)

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5.70.05 Purpose. The intent of this ordinance is to regulate businesses which, unless closely regulated, tend to have serious secondary effects on the community, which effects include, but are not limited to, the following: depreciation of property values and increase in vacancies in residential and commercial areas in the vicinity of Sex Oriented Businesses; interference with residential property owners enjoyment of their property when such property is located in the vicinity of Sex Oriented Businesses as a result of increases in crime, litter, noise and vandalism; higher crime rates in the vicinity of Sex Oriented Businesses; and blighting conditions such as low level maintenance of commercial premises and parking lots, which thereby have a deleterious effect upon adjacent areas. Special regulation of these businesses is necessary to prevent these adverse effects and the blighting or degradation of the neighborhoods in the vicinity of the Sex Oriented Businesses. (Urg. 3341-10/96)

It is neither the intent nor the effect of this Chapter to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor the effect of this Chapter to restrict or deny access by adults to Sex Oriented Materials or to deny access by the distributors or exhibitors of Sex Oriented Businesses to their intended market. (Urg. 3341-10/96)

Nothing in this Chapter is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness or obscene or harmful matter or the exhibition or public display thereof.
(Urg. 3341-10/96)

5.70.010 Definitions.

- (a) Cabaret. "Cabaret" means a nightclub, theater or other establishment which regularly features live performances distinguished or characterized by an emphasis upon specified sexual activities or specifies anatomical areas. (Urg. 3341-10/96, 3431-7/99)
- (b) Chief of Police. "Chief of Police" means the Chief of Police or his or her designee. (Urg. 3341-10/96)
- (c) Distinguished or characterized by an emphasis upon. "Distinguished or characterized by an emphasis upon" means and refer to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon" the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas. See *Pringle v. City of Covina*, 115 Cal.App.3 151 (1981). (Urg. 3341-10/96)
- (d) Encounter Center. "Encounter center" or "rap studio" means any business, agency or person who, for any form of compensation, consideration or gratuity, regularly provides a place where two or more persons may congregate, assemble or associate for the primary purpose of engaging in, describing or discussing specified sexual activities, or exposing specified anatomical areas. (Urg. 3341-10/96, 3431-7/99)
- (e) Entertainment. "Entertainment" shall mean any human body activity in a Sex-Oriented Business, whether performed alone or with other persons, including but not limited to singing, speaking, dancing, acting, posing, modeling, simulating sexual activity, wrestling, pantomiming, or the public display of specified anatomical areas for the purpose of holding or gaining the attention of, diverting or amusing guests or patrons. "Entertainment" shall be synonymous with "performance." (3470-11/00)
- (f) Permit holder or Permittee. "Permit holder" or "Permittee" shall refer to the person or entity to whom the permit is issued and shall include, but not be necessarily limited to the following: (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (1) the sole proprietor of a Sex Oriented Business; (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (2) the partnership owning a Sex Oriented Business, and each of the partners; or (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (3) the corporation owning a Sex Oriented Business and each of its officers and directors, but not individual shareholders. For purposes of this Chapter, "corporation" shall also include not-for-profit corporations and limited liability corporations. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (g) Operator. The permittee or the owner(s); the manager(s), as identified by the permittee, as identified by the manager him or herself or by the employees; or the person, who at any given time, is primarily responsible for the operation of the business. (3470-11/00)
- (h) Performer. "Performer" means any person who dances, models, engages in entertainment, and/or performs specified sexual activities or displays specified anatomical areas in a sex oriented business. Performer shall include persons engaged in or providing entertainment whether they are employees or independent contractors of a sex oriented business and whether or not they entertain with or without compensation or other form of consideration, and whether clothed or unclothed. (3431-7/99, 3470-11/00)

- (i) Regularly Features. "Regularly features" with respect to a Sex Oriented theater or Sex Oriented cabaret means a regular and substantial course of conduct. The fact that live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occur on two (2) or more occasions within a thirty (30) day period; three (3) or more occasions within a sixty (60) day period; or four (4) or more occasions within a one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (j) Seminude. "Seminude" means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the female breast, as well as portions of the body covered by supporting straps or devices. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (k) Sex Oriented Bookstore. "Sex Oriented bookstore" means an establishment having as a regular and substantial portion of its stock, revenue, interior business or floor space for display or distribution in trade, books, magazines or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section devoted to the sale or display of such material. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (l) Sex Oriented Business. "Sex Oriented Business" means any business establishment or concern which as a regular and substantial course of conduct performs or operates as a Sex Oriented Bookstore, Sex Oriented Theater, Sex Oriented Motion Picture Arcade, Cabaret, Encounter Center, Sex Oriented Motel/Hotel, or sells, displays or distributes Sex Oriented Merchandise or Sex Oriented Material, or any other business or concern which as a regular and substantial portion of its business offers to its patrons products, merchandise, services or entertainment which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas but not including those uses or activities, the regulation of which is preempted by state law. "Sex Oriented Business" shall also include any establishment which as a regular and substantial course of conduct provides or allows performers, models, or employees to appear in any public place in lingerie to a point where specified anatomical parts are exposed. As used in this chapter, the terms "regular and substantial course of conduct" and "regular and substantial portion of its business" shall mean any Sex Oriented Business where one or more of the following conditions exist: (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (1) The area(s) devoted to the display of sex oriented merchandise and/or sex oriented material exceeds twenty-five (25%) percent of the total stock, inventory, interior business display or floor space, total display area of the business; or (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (2) A business or concern which presents any type of live entertainment which is distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities and which occurs on two (2) or more occasions within a thirty (30) day period; three (3) or more occasions within a sixty (60) day period; or four (4) or more occasions within a one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (3) At least twenty-five percent (25%) of the revenue of the business is derived from the sale, trade, display or presentation of services, products, or entertainment which are characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical areas. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)

- (m) Sex Oriented Hotel/Motel. "Sex Oriented Hotel/Motel" means a hotel or motel, which
(Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (1) as a regular and substantial course of conduct provides to its patrons, through the provision of rooms equipped with closed circuit television, video recorders or players or other medium, material which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical parts; and/or (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (2) rents, leases, or lets any room for less than a ten (10) hour period, or advertises the provision of sexually explicit material. See Sex Oriented Business for definition of "regular and substantial course of conduct." (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (n) Sex Oriented Material. "Sex Oriented Material" means any Sex Oriented Merchandise, or any book, periodical, magazine, photograph, drawing, sculpture, motion picture film, video tape recording, or other visual representation, characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.
(Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (o) Sex Oriented Merchandise. "Sex Oriented Merchandise" means sex oriented implements or paraphernalia, such as, but not limited to: dildos, auto sucks, sex oriented vibrators, edible underwear, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and/or battery operated vaginas, and similar sex oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.
(Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (p) Sex oriented mini-motion picture theater. "Sex Oriented mini-motion picture theater" means an enclosed building with a capacity for less than fifty (50) persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas for observation by patrons therein. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (q) Sex Oriented motion picture arcade. "Sex Oriented motion picture arcade" means any place to which the public is permitted or invited wherein coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (r) Sex Oriented motion picture theater. "Sex Oriented motion picture theater" means an enclosed building with a capacity of fifty (50) or more persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (s) Specified sexual activities. "Specified sexual activities" means any of the following: (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, masturbation, including masturbation with the use of inanimate objects, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, urophilia, zooerasty, zoophilia. (Urg. 3341-10/96, 3470-11/00)

- (2) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; (Urg. 3341-10/96)
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or (Urg. 3341-10/96)
- (4) Actual or simulated fondling, erotic or sexually touching of human genitals, pubic region, buttocks, cleft of the buttocks, female breast; or anal region. (Urg. 3341-10/96, 3470-11/00)
- (5) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or (Urg. 3341-10/96)
- (6) Erotic or lewd touching, fondling or other sexually oriented contact with an animal by a human being; or (Urg. 3341-10/96)
- (7) Human excretion, urination, menstruation, vaginal or anal irrigation. (Urg. 3341-10/96)
- (8) Striptease, or the removal of clothing, or the wearing of transparent or diaphanous clothing, including models appearing in lingerie, to the point where specified anatomical areas are exposed. (Urg. 3341-10/96, 3431-7/99)
- (t) Specified anatomical areas. "Specified anatomical areas" means any of the following: (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (1) Less than completely and opaquely covered human genitals or pubic region; buttock; or female breast below a point immediately above the top of the areola; or (Urg. 3341-10/96)
 - (2) Human male genitalia in a discernibly turgid state, even if completely and opaquely covered. (Urg. 3341-10/96)
 - (3) Any device, costume, or covering that simulates any of the body parts included in subdivisions (1) and (2) above. (Urg. 3341-10/96)

5.70.015 Statements and records. Person(s) required to obtain a Sex Oriented Business Permit shall maintain complete records which can be segregated with regard to all transactions involving such products, merchandise, services or entertainment which are sufficient to establish the percentage of gross receipts of the business which is derived from such transactions. (Urg. 3341-10/96, 3431-7/99)

Such records shall be maintained for a period of at least three (3) years. (Urg. 3341-10/96)

No person required to keep records under this section shall refuse to allow authorized representatives of the Finance Director or his/her designee to examine said records at reasonable times and places. (Urg. 3341-10/96, 3751-11/06)

5.70.020 Permit required.

- (a) No person, association, partnership or corporation shall own, operate, engage in, conduct or carry on, in or upon any premises within the City of Huntington Beach any "Sex Oriented Business", defined in this chapter, without a Sex Oriented Business Permit and a business license from the City of Huntington Beach. (Urg. 3341-10/96, 3431-7/99)
- (b) To obtain a permit to own, operate, engage in, conduct or carry on any Sex Oriented Business, the Owner shall make application to the Chief of Police, on a form provided by

the Chief of Police. Prior to submitting such application, a non-refundable fee, established by resolution of the City Council, shall be paid to the City to defray, in part, the cost of investigation and report required by this chapter. The receipt, or a copy thereof, shall be supplied to the Chief of Police at the time such application is submitted. (Urg. 3341-10/96, 3431-7/99)

- (c) The application for Permit does not authorize the engaging in, operation of, conducting of, or carrying on of any Sex Oriented Business. (Urg. 3341-10/96, 3431-7/99)
- (d) Only the Owner of the Sex Oriented Business is eligible to obtain a Sex Oriented Business Permit. (Urg. 3341-10/96, 3431-7/99)
- (e) The Owner shall post the Permit conspicuously in the Sex Oriented Business Premises. (Urg. 3341-10/96, 3431-7/99)
- (f) The fact that an Owner has other types of state or City permits or licenses does not exempt the Owner from the requirement of obtaining a Sex Oriented Business Permit. (3431-7/99)

5.70.030 Application for Sex Oriented Business Permit. Each application for a Sex Oriented Business permit shall contain the following information: (Urg. 3341-10/96)

- (a) Owner Information (Urg. 3341-10/96, 3431-7/99)
 - (1) The full, true name and any other names, including aliases, used by the applicant. (Urg. 3341-10/96)
 - (2) The present business address and telephone number of the applicant. (Urg. 3341-10/96, 3431-7/99)
 - (3) Acceptable written proof that the applicant is at least eighteen (18) years of age. (Urg. 3341-10/96, 3431-7/99)
 - (4) The social security number and state driver's license or identification card of the applicant. (3431-7/99)
 - (5) The applicant's fingerprints on a form provided by the Police Department and a color photograph clearly showing the Applicant's face. Any fees for the fingerprints or photograph shall be paid by the Applicant. (3431-7/99)
 - (6) If the applicant intends to operate the Sex Oriented Business under a name other than that of the applicant the applicant shall file the fictitious name of the Sex Oriented Business and show proof of registration of the fictitious name. (Urg. 3341-10/96, 3431-7/99)
 - (7) The business license history of the applicant and whether such applicant, in previous operations in this or any other city, state, or territory under license, has had such license or permit for a Sex Oriented Business or similar type of business revoked or suspended, the reason therefore and the business activity or occupation subsequent to such action of suspension or revocation. (Urg. 3341-10/96, 3431-7/99)
 - (8) All felony convictions of the applicant within the last five (5) years; all misdemeanor convictions within the last two (2) years of the applicant of any of the offenses set forth in California Penal Code Section 315, 316, 266a, 266b, 266c, 266e, 266g, 266h, 266i, 647(a), 647(b) and 647(d) of the California Penal Code as those sections now appear or may hereafter be amended or renumbered; or any offense requiring registration under California Penal Code Section 290, and the equivalent of the aforesaid offenses outside of the State of California. (Urg. 3341-10/96, 3431-7/99)

- (9) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, evidence that the corporation is in good standing under the laws of the State of California, the name of the registered corporate agent and the address of the registered office for service of process, together with the place and date of incorporation, and the names and addresses of each of its current officers and directors. If the applicant is a partnership, the applicant shall set forth the name, residence address and dates of birth of the partners, including limited partners, and attached a copy of the partnership agreement. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the County Clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)

(b) **Business Information** (Urg. 3341-10/96)

- (1) The name and address of the owner and lessor of the real property upon which the business is to be conducted. (Urg. 3341-10/96, 3431-7/99)
- (2) A description of the type of Sex Oriented Business for which the Permit is requested and the proposed address where the Sex Oriented Business will operate, plus the names and addresses of the owners and lessors of the Sex Oriented Business site. (Urg. 3341-10/96)
- (3) The address to which notice of action on the application is to be mailed. (Urg. 3341-10/96)
- (4) The name(s) of the responsible person(s) who will be on the premises to act as manager during the times that the business is open, or a statement that the applicant has not yet selected the manager(s). (3431-7/99)
- (5) A site plan including floor plan, building elevations and parking lot diagram showing the interior and exterior configuration of the premises, including a statement of the total floor area occupied by the Sex Oriented Business. (Urg. 3341-10/96, 3431-7/99)
- (6) Any other similar permits obtained in other jurisdictions, including year of issuance and name of jurisdiction. (3431-7/99)

5.70.035 Sex Oriented Business Permit Issuance. (Urg. 3341-10/96, 3431-7/99)

- (a) Within ten (10) business days of receipt of a completed application, as set forth in Section 5.70.030 and payment of the applicable fees, the Chief of Police shall issue a Sex Oriented Business Permit. However, issuance of the permit does not preclude revocation of the permit pursuant to Section 5.70.115. (Urg. 3341-10/96, 3431-7/99)
- (b) No sex oriented business shall be issued a permit or permitted to operate within the City if any activity within the establishment is prohibited by federal, state, or local law, provided that the local law is not pre-empted. (3470-11/00)

5.70.040 Sex Oriented Performer Permit (Urg. 3341-10/96, 3431-7/99)

- (a) All performers, as defined herein, must obtain a valid sex oriented performance permit from the City. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (b) To obtain a Sex Oriented Performer Permit, the individual shall make application to the Chief of Police on a form provided by the Chief of Police. Prior to submitting such application, a non-refundable fee, established by resolution of the City Council, shall be paid to the City to defray, in part, the cost of investigation and report required by this chapter.

The report, or a copy thereof, shall be supplied to the Chief of Police at the time such application is submitted. (Urg. 3341-10/96, 3431-7/99)

- (c) The application for a permit does not authorize the engaging in a performance of live performers depicting specified anatomical areas or involving specified sexual activities. (3431-7/99)
- (d) A Sex Oriented Performer engaged in live entertainment shall provide proof of a valid Sex Oriented Performer Permit upon demand of a police officer. Failure to provide proof shall be a violation of this Chapter. (3431-7/99)
- (e) The fact that an applicant possesses other types of state or city permits or licenses does not exempt the applicant from the requirement of obtaining a Sex Oriented Performer Permit. (3431-7/99)
- (f) The completed application shall contain the following information and be accompanied by the following documents: (Urg. 3341-10/96, 3431-7/99)
 - (1) The applicant's legal name and any other names (including "stage names" and aliases) used by the applicant; (Urg. 3341-10/96)
 - (2) The applicant's height, weight, hair and eye color and date and place of birth; (Urg. 3341-10/96, 3431-7/99)
 - (3) Present residence address and telephone number; (Urg. 3341-10/96, 3431-7/99)
 - (4) All felony convictions of the applicant within the last five (5) years; all misdemeanor convictions within the last two (2) years of the applicant of any of the offenses set forth in California Penal Code Section 315, 316, 266a, 266b, 266c, 266e, 266g, 266h, 266i, 647(a), 647(b), and 647(d) of the California Penal Code as those sections now appear or may hereafter be amended or renumbered, all offenses requiring registration under California Penal Code Section 290; and the equivalent of the aforesaid offenses outside of the State of California. (Urg. 3341-10/96, 3431-7/99)
 - (5) The social security number and state driver's license or identification number of the applicant. (Urg. 3341-10/96, 3431-7/99)
 - (6) Acceptable written proof that the applicant is at least eighteen (18) years of age; (Urg. 3341-10/96, 3431-7/99)
 - (7) The applicant's fingerprints on a form provided by the Police Department, and a color photograph clearly showing the applicant's face. Any fees for the photographs and fingerprints shall be paid by the applicant; (Urg. 3341-10/96, 3431-7/99)
 - (8) The business address and telephone number where the performance will take place. (3431-7/99)
 - (9) Any other similar permits obtained in other jurisdictions, including year of issuance and name of jurisdiction. (3431-7/99)

5.70.045 Sex Oriented Performers Permit Issuance. (Urg. 3341-10/96, 3431-7/99)

Within ten (10) business days of receipt of a completed application, as set forth in Section 5.70.040 and payment of the applicable fees, the Chief of Police shall issue a Sex Oriented Performers Permit. However, issuance of the permit does not preclude revocation of the permit pursuant to Section 5.70.120. (Urg. 3341-10/96, 3431-7/99)

5.70.050 Applicant to appear. The applicant for a Sex Oriented Business Permit or a Sex Oriented Performers Permit shall personally appear during normal business hours at the Police Department of the City of Huntington Beach and produce proof that a non-refundable application fee, established by resolution of the City Council, has been paid and shall present the application containing the aforementioned and described information. (Urg. 3341-10/96, 3431-7/99)

5.70.070 Permit renewal. Each Sex Oriented Business Permit and Sex Oriented Performers Permit shall expire one (1) year from the date of issuance. The applicant shall make application for renewal to the Chief of Police on a form provided by the Chief of Police accompanied by the renewal fee and a copy of the Permit to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the Permit. When made less than thirty (30) days before the expiration date, the expiration of the Permit will not be stayed. (Urg. 3341-10/96, 3431-7/99)

If the application conforms to the previously approved application and the Sex Oriented Business has not changed, the permit shall be renewed by the Chief of Police for another year. Notice of such renewal shall be given, in writing, to the permittee within ten (10) business days following the date of receipt of the completed renewal application. Any change or alteration in the location, nature or operation of the Sex Oriented Business will require a new application to be processed in the same manner as the original applications. The renewal fee shall be established by resolution of the City Council. Applications for renewal shall be acted on as provided herein for action upon applications for Permits. (Urg. 3341-10/96, 3431-7/99)

The applicant for renewal of a Sex Oriented Business Permit or a Sex Oriented Performers Permit shall personally appear during normal business hours at the Police Department of the City of Huntington Beach and produce proof that a non-refundable application fee, established by resolution of the City Council, has been paid and shall present the application containing the aforementioned and described information. (3431-7/99)

5.70.080 Permits nontransferable.

- (a) No Sex Oriented Business permit may be sold, transferred or assigned by a permittee, or by operation of law, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void; provided and excepting, however, that if the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of such permit, and in such case, the permit, upon notification to the Chief of Police, shall be placed in the name of the surviving partner. A Sex Oriented Business permit issued to a corporation shall be deemed terminated and void when there is a change in any officer or director. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)

Any change in the nature or composition of the Sex Oriented Business from one type of Sex Oriented Business use to another type of Sex Oriented Business use shall also render the permit null and void. (Urg. 3341-10/96)

- (b) No Sex Oriented Business Performer permit may be sold, transferred or assigned to any other person or persons. (3431-7/99)

5.70.090 Sex Oriented Businesses -- Change of location or name. (Urg. 3341-10/96)

- (a) No Sex Oriented Business shall move from the location specified on its permit until a change of location fee, established by resolution of the City Council, has been deposited with the city, and approval has been obtained from the Chief of Police. Such approval shall not be given unless all requirements and regulations, as provided herein for applications for permits, have been met. (Urg. 3341-10/96, 3431-7/99)

- (b) No permit holder shall operate, conduct, manage, engage in, or carry on a Sex Oriented Business under any name other than his name and the name of the business as specified on the applicable permit. (Urg. 3341-10/96, 3431-7/99)
- (c) Any application for an extension or expansion of a building or other place of business where a Sex Oriented Business is located shall require inspection and shall comply with the provisions and regulations of this Chapter. (Urg. 3341-10/96)

5.70.095 Sex Oriented Performer--Change of location or name. No permit holder shall perform under any name other than the name specified on his or her permit in any other location other than the location specified on his or her permit. (3431-7/99)

5.70.100 Sex Oriented Business Standards of Operation. (Urg. 3341-10/96, 3470-11/00)

- (a) Except as specifically provided in this Chapter, the Sex Oriented Business shall comply with the zoning, parking, development and design standards applicable to the zone in which the business is located. (Urg. 3341-10/96)
 - (1) The Sex Oriented Business shall be conducted wholly within a building and shall not be located, in whole or in part, within any portable structure. (Urg. 3341-10/96)
 - (2) All indoor areas of the Sex Oriented Business within which patrons are permitted, except restrooms, shall be open to view at all times. (Urg. 3341-10/96)
- (b) General Provisions (Urg. 3341-10/96)
 - (1) No Sex Oriented Material or Sex Oriented Merchandise shall be displayed in such manner as to be visible from any location other than within the premises occupied by the Sex Oriented Business. (Urg. 3341-10/96)
 - (2) No person under the age of 18 years shall be permitted within the premises at any time except as pursuant to California Penal Code Section 313.2. (Urg. 3341-10/96, 3431-7/99)
 - (3) The Sex Oriented Business shall not operate or be open between the hours of 2:00 a.m. and 11:00 a.m. (Urg. 3341-10/96, 3431-7/99)
 - (4) The Sex Oriented Business shall provide and maintain separate restroom facilities for male patrons and employees and female patrons and employees. Male patrons and employees shall be prohibited from using the restroom(s) for females, and female patrons and employees shall be prohibited from using the restroom(s) for males, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. The restrooms shall be free from all Sex Oriented Materials and Sex Oriented Merchandise. Restrooms shall not contain television monitors or other motion picture or video projection, recording or reproduction equipment. The foregoing provisions of this paragraph shall not be applicable to a Sex Oriented Business which deals exclusively with sale or rental of merchandise which is not used or consumed on the premises, such as a Sex Oriented Bookstore, and which does not provide restroom facilities to its patrons or the general public. (Urg. 3341-10/96)
 - (5) The Sex Oriented Business shall not conduct, advertise, offer, or solicit any massage, acupuncture, figure modeling, piercing, tattooing, acupressure or escort services and shall not allow such activities on the premises. (Urg. 3341-10/96, 3431-7/99)
- (c) Any Sex Oriented Business which allows customers to remain on the premises while viewing any live, filmed or recorded entertainment, or while using or consuming the products or services supplied on the premises, shall conform to the following requirements: (Urg. 3341-10/96)

- (1) At least one security guard who shall possess a valid license from the State of California shall be on duty outside the premises, patrolling the grounds and parking areas, at all times while the business is open. The security guard(s) shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of this Chapter. Any security guard required by this subparagraph shall be uniformed in such manner so as to be readily identifiable as a security guard by the public. No security guard required pursuant to this subparagraph shall act as a door person, ticket seller, ticket taker, or admittance person while acting as a security guard hereunder. (Urg. 3341-10/96, 3431-7/99)
- (2) Landscaping shall conform to the standards established for the zone, except that, if the Sex Oriented Business is the sole use on a lot, no planting shall exceed thirty (30) inches in height, except trees with foliage not less than six (6) feet above the ground. (Urg. 3341-10/96)
- (3) The entire exterior grounds, including the parking lot, shall be lighted sufficiently to permit the security personnel to observe activity on the grounds and within automobiles. (Urg. 3341-10/96)
- (4) The premises within which the Sex Oriented Business is located shall provide sufficient sound absorbing insulation so that noise generated inside said premises shall not be audible anywhere on any adjacent property or public right of way or within any other building or other separate unit within the same building. (Urg. 3341-10/96)
- (5) No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times. (Urg. 3341-10/96)
- (6) Permanent barriers shall be installed and maintained to screen the interior of the premises from public view for each door used as an entrance/exit to the business. (Urg. 3341-10/96)
- (d) The following additional regulations shall pertain to Sex Oriented Motion Picture Arcades which provide more than one viewing area: (Urg. 3341-10/96)
 - (1) Upon application for a Sex Oriented Business Permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations, the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty two (32) square feet of floor area with no dimension greater than eight (8) feet. The diagram shall also designate the place at which the Sex Oriented Business Permit and city business license will be conspicuously posted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Chief of Police shall waive the foregoing diagram for renewal applications if the Owner adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. (Urg. 3341-10/96)
 - (2) No alteration in the configuration or location of a manager's station(s) may be made without the prior approval of the Chief of Police. (Urg. 3341-10/96, 3431-7/99)
 - (3) It shall be the duty of the Owner(s) to insure that at least one (1) employee is on duty and situated at each manager's station at all times that any patron is present inside the premises. (Urg. 3341-10/96, 3431-7/99)

- (4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. (Urg. 3341-10/96, 3431-7/99)
- (5) It shall be the duty of the Owner(s) and it shall also be the duty of all employees present on the premises to insure that the view area specified above remains unobstructed by any doors, walls, persons, merchandise, display racks or other materials at all times and to insure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to this subsection. (Urg. 3341-10/96, 3431-7/99)
- (6) No Individual Viewing Area may be occupied by more than one person at any one time. "Individual Viewing Area" shall mean a viewing area designed for occupancy by one person. Individual Viewing Areas of the Sex Oriented Business shall be operated and maintained without any hole or other opening or means of direct communication or visual or physical access between the interior space of two (2) or more Individual Viewing Areas. (Urg. 3341-10/96, 3431-7/99)
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access with an illumination of not less than ten (10) foot candle as measured at the floor level. (Urg. 3341-10/96, 3431-7/99)
- (8) It shall be the duty of the Owner(s) and it shall also be the duty of all employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present on the premises. (Urg. 3341-10/96, 3431-7/99)
- (e) The following additional requirements shall pertain to Sex Oriented Businesses providing live entertainment. (Urg. 3341-10/96, 3470-11/00)
 - (1) No person shall perform, and no owner, operator, or manager of a Sex Oriented Business shall permit live entertainment for patrons of a Sex Oriented Business except where: (Urg. 3341-10/96, 3470-11/00)
 - (i) if unclothed performed upon a stage or platform located at least eighteen (18) inches above the level of the floor; and (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (ii) whether clothed or unclothed, a distance of at least six (6) feet is maintained between any performer and any patron. (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (2) The Sex Oriented Business shall provide separate dressing room facilities for performers which are exclusively dedicated to the entertainers' use. (Urg. 3341-10/96, 3431-7/99)
 - (3) The Sex Oriented Business shall provide an entrance/exit to the premises for performers which is separate from the entrance/exit used by patrons. (Urg. 3341-10/96, 3431-7/99)
 - (4) No performer shall have intentional physical contact with any patron, and no patron shall have intentional physical contact with any performer while on the premises which physical contact involves the touching of the clothed or unclothed genitals, pubic area, buttocks, cleft of the buttocks, perineum, anal region, or female breast with any part or area of such other person's body. (Urg. 3341-10/96, 3431-7/99)

- (5) Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this Section. (Urg. 3341-10/96, 3431-7/99)
- (6) The Sex Oriented Business shall maintain a file containing the Performer Permit of all performers at the business. The file shall be available for viewing during all police inspections. (3431-7/99)

5.70.110 Inspections. (Urg. 3341-10/96, 3431-7/99)

The permit holder shall allow the City of Huntington Beach and its authorized representatives to conduct reasonable unscheduled inspections of the premises of the Sex Oriented Business for the purpose of ensuring compliance with the law at any time the Sex Oriented Business is open for business or is occupied; provided, whenever any city official relies upon this section to gain access to the permit holder's establishment without paying any otherwise applicable admission fee or cover charge, any person employed by the permit holder to collect such admission fees or cover charges may require such official, before admitting such official to the establishment, to produce identification indicating the official's name, branch of city government by which such official is employed, and the job title such official holds within that branch of city government. (Urg. 3341-10/96, 3431-7/99)

5.70.115 Revocation of a Sex Oriented Business Permit. (3431-7/99)

- (a) The Chief of Police shall revoke a Sex Oriented Business Permit when: (Urg. 3341-10/96, 3431-7/99)
 - (1) The permit holder is convicted of a felony or misdemeanor occurring upon or relating to the premises or lot upon which the Sex Oriented Business is located which offense is classified by the state as an offense involving sexual crime against children, sexual abuse, rape, distribution of obscene material or material harmful to minors, prostitution or pandering, including, but not necessarily limited to the violation of any crime requiring registration under California Penal Code § 290, or any violation of Penal Code § 243.4, 261, 261.5, 264.1, 266, 266a through 266k, inclusive, 267, 286, 286.5, 288, 288a, 311 through 311.10, inclusive, 314, 315, 316 or 647; or (Urg. 3341-10/96, 3431-7/99)
 - (2) If, on two (2) or more occasions within a twelve (12) month period, a person or persons has (have) been convicted of a felony or misdemeanor for an offense set forth in this section as a result of such person's activity on the premises or property on which the Sex Oriented Business is located, and the person or persons were employees, contractors or agents of the Sex Oriented Business at the time the offenses were committed; or (Urg. 3341-10/96, 3431-7/99)
 - (3) If the permit holder or an employee has knowingly allowed prostitution, or solicitation for prostitution, knowingly allowed or permitted any act of sexual intercourse; sodomy, oral copulation, or masturbation to be committed or allowed in or upon the premises where such Sex Oriented Business is to be located, or to be used as a place in which solicitations for sexual intercourse, sodomy, oral copulation or masturbation openly occur or (Urg. 3341-10/96, 3431-7/99)
 - (4) The Sex Oriented Business has been operated in violation of any of the requirements of the Huntington Beach Municipal Code if (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
 - (i) the violation is of a continuous nature (i.e. cannot be remedied by immediate cessation of the activity such as a building or structural violation), the Business continues to be operated in violation of such provision for more than ten (10) days following the date written notice of such violation is mailed or delivered to the Owner, or (Urg. 3341-10/96, 3470-11/00)

- (ii) the violation is of a noncontinuous nature, two (2) or more violations of the same provision or four (4) or more violations of any other of the provisions of the Huntington Beach Municipal Code occur (regardless of whether notice of each individual violation is given to Owner) within any twelve (12) month period; or (Urg. 3341-10/96, 3431-7/99, 3470-11/00)
- (5) The applicant has made material misrepresentations or fraudulent, false, or misleading statements in the application; or (3431-7/99)
- (6) Permit holder has had a Sex Oriented Business permit or other similar license or permit denied or revoked for cause by this city or any other jurisdiction located in or out of this state prior to the date of application; or (3431-7/99)
- (7) That the Permit holder, his or her employee, agent, partner, director, officer, stockholder or manager has not within two (2) years of the date of the application knowingly allowed or permitted any act of sexual intercourse, sodomy, oral copulation, or masturbation to be committed or allowed in or upon the premises where such Sex Oriented Business is to be located, or to be used as a place in which solicitations for sexual intercourse, sodomy, oral copulation or masturbation openly occur. (Urg. 3341-10/96, 3431-7/99)
- (b) Upon determining that grounds for permit revocation exist, Chief of Police shall furnish written notice of the revocation to the Permit holder. Such notice shall summarize the principal reasons for the revocation. (Urg. 3341-10/96, 3431-7/99)
- (c) Upon receipt of written notice of revocation, if the Permit holder files within thirty (30) days a petition for writ of mandate in state court to review the revocation, then the City shall not enforce the revocation unless the Superior Court has denied the writ or the City has obtained injunctive relief. The notice will be deemed received if the Chief of Police has placed the notice in first class mail and the notice is not returned within ten (10) days and the City has made a good faith attempt at personal service. (3431-7/99, 3470-11/00)

If Permit holder fails to file a writ of mandate within thirty (30) days of receipt of written notice of revocation, the City shall enforce the revocation. (3431-7/99)

5.70.120 Revocation of a Sex Oriented Performer Permit. (3431-7/99)

- (a) The Chief of Police shall revoke a Sex Oriented Performer Permit when: (3431-7/99)
 - (1) The applicant has made material misrepresentations or false or misleading statements in the application; or (3431-7/99)
 - (2) The Permit holder is convicted of a felony or misdemeanor which offense is classified by the state as an offense involving sexual crime against children, sexual abuse, rape, distribution of obscene material or material harmful to minors, prostitution or pandering, including, but not necessarily limited to, the violation of any crime requiring registration under California Penal Code § 290, or any violation of Penal Code § 243.4, 261, 261.5, 264.1, 266, 266a through 266k, inclusive, 267, 286, 286.5, 288, 288a, 311 through 311.10, inclusive, 314, 315, 316 or 647(a), 653.22; or (3431-7/99, 3470-11/00)
 - (3) The Sex Oriented Performer has violated the requirements of the Huntington Beach Municipal Code; or (3431-7/99, 3470-11/00)
 - (4) Permit holder has had a Sex Oriented Performer Permit or other similar license or permit denied or revoked for cause by this city or any other jurisdiction located in or out of this state within one (1) year prior to the date of application. (3431-7/99, 3470-11/00)

- (5) Upon determining that grounds for permit revocation exist, Chief of Police shall furnish written notice of the revocation to the Permit holder. Such notice shall summarize the principal reasons for the revocation. (3431-7/99)
- (b) Upon receipt of written notice of revocation, if the Permit holder files within thirty (30) days a petition for writ of mandate in state court to review the revocation, then the City shall not enforce the revocation unless the Superior Court has denied the writ, or the City has obtained injunctive relief. The notice will be deemed received if the Chief of Police has placed the notice in first class mail and the notice is not returned within ten (10) days and the City has made a good faith attempt at personal service. (3431-7/99, 3470-11/00)
- (c) If Permit holder fails to file a writ of mandate within thirty (30) days of receipt of written notice of revocation, the City shall enforce the revocation. (3431-7/99)

5.70.130 Regulations Nonexclusive. The provisions of this article regulating Sex Oriented Businesses are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other regulations pertaining to the operation of businesses as adopted by the City Council of the City of Huntington Beach. (Urg. 3341-10/96)

5.70.140 Violation--Penalty. Any violation of this chapter shall be punishable by: (Urg. 3341-10/96, 3470-11/00)

- (a) Administrative Citation. Violation of this Chapter is subject to the issuance of an administrative citation under the provisions of Chapter 1.18 of this Code. An operator may be cited for violations occurring on the premise in their presence or for knowingly permitting violations of this Chapter; (3470-11/00)
- (b) Civil Action. The City Attorney may institute an action in any court of competent jurisdiction, including an action to abate a nuisance, to restrain, enjoin, or abate the condition(s) found to be in violation of this provisions of this Chapter, as provided by law. (3470-11/00)
- (c) It shall be a violation of this Chapter for any principal, including but not limited to any operator, to permit, procure, counsel or assist any agent of that principal, including but not limited to an employee or independent contractor, to violate any provision of this Chapter. (3470-11/00)

5.70.150 Unlawful operation declared nuisance. Any Sex Oriented Business operated, conducted or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance. (Urg. 3341-10/96, 3470-11/00)

5.70.160 Minors and Intoxicated Persons. (Urg. 3341-10/96)

- (a) It shall be a misdemeanor for any person under the age of eighteen (18) years or any obviously intoxicated person to enter or remain on the premises of a Sex Oriented Business at any time except as pursuant to California Penal Code Section 313.2. A sign giving notice of this provision shall be prominently posted at each entrance to the premises of the Sex Oriented Business. (Urg. 3341-10/96, 3431-7/99)
 - (1) Every person having responsibility for the operation of a Sex Oriented Business who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly allows such minor to enter or remain on the premises of the business is guilty of a misdemeanor. (Urg. 3341-10/96)
 - (2) Every person having responsibility for the operation of a Sex Oriented Business who allows any obviously intoxicated person to enter or remain on the premises of the business is guilty of a misdemeanor. (Urg. 3341-10/96)

- (b) For purposes of this section, the holder of a Sex Oriented Business Permit when present on the premises, and the manager or other person(s) in charge of the premises, are persons having responsibility for the operation of the business. The term "minor" shall mean any person under the age of eighteen (18) years. (Urg. 3341-10/96)

5.70.170 Employment of Persons Without Permits Unlawful.

- (a) It shall be unlawful for any owner, operator, manager, or permittee in charge of or in control of a Sex Oriented Business which provides live entertainment depicting specified anatomical areas or involving specified sexual activities to allow any person to perform such entertainment who is not in possession of a valid, unrevoked Sex Oriented Performer Permit. (Urg. 3341-10/96, 3431-7/99)
- (b) The owner, operator, manager or permittee in charge of or in control of the Sex Oriented Business which provides live entertainment shall provide proof of a valid Sex Oriented Performer Permit for each individual engaged in live performance upon demand of a police officer. Failure to provide proof is a violation of this chapter. (3431-7/99)

5.70.180 Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each Section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective. (Urg. 3341-10/96)